

GLOBE WHOLESALE TOBACCO DISTRIBUTORS INC., D/B/A/GLOBE WHOLESALE, CO.,		Case Nos. 29-CA-093481
Respondent,		
Ali Lamnii,	Charging Party.	

Globe Wholesale Tobacco Distributors, Inc., d/b/a Globe Wholesale Co. ("Globe") by its attorneys Epstein Becker & Green, P.C., submits this objection and Opposition to the General Counsel's Motion to Supplement the Record to include: (1) Subpoena Duces Tecum No. B 1 HSVZ23, (2) Globe's Petition to Revoke the Subpoena; (3) General Counsel's Opposition to Globe's Petition to Revoke the Subpoena; and (4) Administrative Law Judge Raymond P. Green's ("ALJ") June 16, 2014 Order regarding the subpoena.

The General Counsel's Motion should be denied because there are no extraordinary circumstances that warrant reopening the record. The documents which the General Counsel seeks to add to the record are not evidence pertaining to the allegations in the Complaint and pursuant to Section 102.31 of the Board's Rules and Regulations are not properly made part of the record. Since the General Counsel is not

seeking to introduce any evidence relevant to the issues in the Complaint before the ALJ, the General Counsel's motion must be denied.¹

Section 102.48(d)(1) of the Board's Rules and Regulations provides that a party may move to reopen the record after a Board decision or order only under "extraordinary circumstances." The party seeking to reopen the record must demonstrate "why [the document] was not presented previously, and that, if adduced and credited, it would require a different result." See Remington Lodging & Hospitality, LLC, d/b/a The Sheraton Anchorage, Cases 19-CA-32148, et al, (August 1, 2012 Board Decision denying motion to reopen record after administrative law judge's decision); USF Red Star, Inc., 339 NLRB 389 (2003)(applying Section 102.48(d) in ruling on a motion to reopen a record pursuant to 102.48(b) filed after issuance of an administrative law judge's decision but before issuance of a Board decision.) Here, Counsel for the General Counsel has failed to present an extraordinary reason why the Board should reopen the record. In fact, Counsel for the General Counsel fails to explain why he failed to ask the ALJ to place the documents in question in the record or in a rejected exhibit file.

Respondent also points out that the ALJ did not exclude the documents which the General Counsel now seeks to belatedly add to the record. Rather, the ALJ stated on the record that if "... any aggrieved party wants to put into the record matters related to the subpoena; that's fine..." (Tr. 8). The General Counsel chose not to offer the documents into the record at the hearing. Accordingly, Counsel for the General

¹ The General Counsel's exception to the ALJ's reference to 102.66 instead of 102.31 is truly a reference to a harmless error since the two provisions are identical.

Counsel waived any objection he may have had because he was offered an ample opportunity to place the documents into the record.

Counsel for the General Counsel has also not shown how any of the documents would change the outcome of the ALJ's Decision.² Accordingly, the General Counsel's motion to reopen the record should be denied.

CONCLUSION

Because of the absence of extraordinary circumstances warranting reopening the record, and for the foregoing reasons, Globe respectfully urges that the General Counsel's Motion to Reopen the Record be denied.

Dated: October 6, 2014

Respectfully submitted,

EPSTEIN BECKER & GREEN, P.C.

By: 

James S. Frank
Donald S. Krueger

250 Park Avenue
New York, N.Y. 10177
(212) 351-4500

Attorneys for Globe Wholesale, Co.

² While the documents sought in the subpoena relate to the issue of hours worked by the Charging Party, General Counsel is not seeking to introduce the underlying records apparently acknowledging that the Regional Director dismissed the allegation that the Charging Party worked sufficient hours to have been covered under the collective bargaining agreement. In any event, the ALJ correctly decided that there were no basis for enforcing the subpoena since the ALJ assumed that the Charging Party had a colorable claim that he was covered under the collective bargaining agreement.

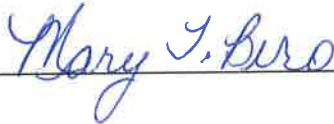
CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2014, I caused true copies of Globe's Response to General Counsel's Motion to Reopen or Supplement the Record to the Administrative Law Judge to be served via electronic filing, email and Federal Express upon the following:

James G. Paulsen,
Regional Director
National Labor Relations Board, Region 29
Two Metro Tech center, Ste 5100
Brooklyn, New York 11201-3838
(james.paulesen@nrlrb.gov)

Ashok Bokde
Staff Attorney
National Labor Relations Board, Region 29
Two Metro Tech center, Ste 5100
Brooklyn, New York 11201-3838
(Ashok.bodke@nrlrb.gov)

Ali Lamnii
255 79th Street
Brooklyn, New York 11220-2694
(By Federal Express)



Dated: October 6, 2014